

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

RICO DARKS,

CASE NO. 2:08-cv-00043
JUDGE SMITH
MAGISTRATE JUDGE KING

Petitioner,

v.

TIMOTHY BRUNSMAN, Warden,

Respondent.

OPINION AND ORDER

On December 11, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that respondent's motion to dismiss be denied and that respondent be directed to file a response to the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 within thirty days. Although the parties were advised of the right to object to the Magistrate Judge's *Report and Recommendation*, and of the consequences of failing to do so, no objections have been filed.

The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. Respondent's motion to dismiss, Doc. No. 9, is **DENIED**. Respondent is **DIRECTED** to file a response to the petition which complies with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts within thirty (30) days.

IT IS SO ORDERED.

s/George C. Smith
GEORGE C. SMITH
United States District Judge